

[\*Dean v. Houston Lighting & Power Co.\*](#), 93-ERA-7 (ARB Oct. 10, 1996)

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**U.S. Department of Labor**  
Administrative Review Board  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

**CASE NOS. 93-ERA-0007, 93-ERA-0008**

**DATE: October 10, 1996**

In the Matter of:

**JAMES J. DEAN**  
**DAVID R. LAMB**

**COMPLAINANTS,**

**v.**

**HOUSTON LIGHTING & POWER CO.**  
**RESPONDENT.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD<sup>1</sup>

**FINAL ORDER APPROVING SETTLEMENT  
AND DISMISSING COMPLAINT**

This case arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992), and is pending before the Board on exceptions to a Recommended Decision and Order of the Administrative Law Judge. The parties submitted a Settlement Agreement and Full and Final Release and moved for approval of the settlement and dismissal of the complaints with prejudice. The motion for approval of the settlement is based on an agreement entered into by the parties and we must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaints. 42 U.S.C. § 5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. *See* Background and Paragraphs 1, 5, 6, and 7. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-

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1, Sec. Order, Nov. 2, 1987, slip op. at 2, we have limited our review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement of the Complainants' allegations that Respondent violated the ERA.

Paragraph 3 provides that the parties shall not disclose certain terms of the Settlement Agreement except to financial advisors, attorneys, the NRC, the Department of Labor, or other necessary agencies or consulting personnel. We construe this confidentiality provision as not restricting any disclosure where required by law. *McGlynn v. Pulsair Inc.*, Case No. 93-CAA-2, Sec. Final Order Approving Settlement, June 28, 1993, slip op. at 3.

The parties' submissions including the agreement become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988). The FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.<sup>2</sup> *See Debose v. Carolina Power & Light Co.*, Case No. 92-ERA-14, Order Disapproving Settlement and Remanding Case, Feb. 7, 1994, slip op. at 2-3 and cases there cited. Respondent requested in the motion for approval of the settlement that its terms be kept confidential and that Respondent be notified of any FOIA request involving the settlement before disclosure, pursuant to the Department of Labor FOIA regulations, 29 C.F.R. § 70.26 (1995). *See* footnote 1.

We find that the agreement, as here construed, is a fair, adequate and reasonable settlement of the complaint. Accordingly, We **APPROVE** the agreement and **DISMISS THE COMPLAINT WITH PREJUDICE**.

**SO ORDERED.**

**DAVID A. O'BRIEN**

Chair

**KARL J. SANDSTROM**

Member

**JOYCE D. MILLER**

Alternate Member

**[ENDNOTES]**

<sup>1</sup> On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996). Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order and regulations under which the Administrative Review Board now issues final agency decisions. Final procedural revisions to the regulations (61 Fed. Reg. 19982) implementing this reorganization were also promulgated on this date.

<sup>2</sup> Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its

objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h).